IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/04/2004

CORAM

THE HONOURABLE MR.B.SUBHASHAN REDDY, THE CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE V.S.SIRPURKAR

W.P. No. 11662 of 2004 and W.P.No. 12300 of 2004

W.P. NO.11662/2004:

Vaiko ... Petitioner

-Vs-

1.Union of India, rep. by
its Secretary,
Ministry of Law and Justice,
401, 'A' Wing, Sastri Bhavan,
New Delhi.

2.The State of Tamil Nadu, rep.
by its Chief Secretary,
Fort St. George, Chennai-9.

3.Special Public Prosecutor in
charge of POTA cases and
Additional Public Prosecutor,
Office of the State Public Prosecutor,
High Court Buildings, Chennai-104.

4.The Deputy Superintendent of Police,
"Q" Branch C.I.D.
Kalaimagal Nagar,
Madurai-625 010. ... Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying to issue a writ of mandamus directing the second respondent to implement the direction of the Review Committee made in Cr.No.280/02(TN) dated 8.4.2004 forthwith by giving instruction to the third respondent to withdraw the prosecution in Special C.C.No.1 of 2003 on the file of the Special Court under the Prevention of Terrorism Act, Chennai at Poonamallee.

For petitioner :: Mr.K.Chandru, senior counsel
for Mr.G.Devedoss.

^For R-1 :: Mr.J.Madanagopal Rao, SCGSC

For R-2 :: Mr.N.R.Chandran, Advocate
General and Mr.I.Subramaniam,
Public Prosecutor assisted by
Mr.V.Raghupathi, Govt. Pleader

For R-3 :: Mr.S.Jayakumar, Spl. Public
Prosecutor for POTA cases.

W.P. No.12300/2004:

The State of Tamil Nadu, rep.
by its Chief Secretary,
Fort St. George, Chennai-9. Petitioner

-Vs-

1.Union of India, rep. by
its Secretary,
Ministry of Law and Justice,
New Delhi.

2.Review Committee on Prevention of
Terrorism Act, 2002 through its
Secretary, Room No.246,
Vigyan Bhavan Annexe, New Delhi.

3.Vaiko
4.Madurai Ganesan
5.Alagusundaram
6.Ganesa Murthy
7.Veera Ilavarasan
8.Bhoominathan
9.P.S.Maniyan
10.Sivanthiappan
11.Nagarajan
12.Gingee N. Ramachandran Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying to issue a writ of certiorari calling for the records of the 2nd
respondent culminated in its order dated 8.4.2004 and quash the same.

For petitioner :: Mr.N.R.Chandran, Advocate
General and Mr.I.Subramaniam,
Public Prosecutor assisted by
Mr.V.Raghupathi, Govt. Pleader.

For R-1 :: Mr.J.Madanagopal Rao, SCGSC

For R-3 :: Mr.K.Chandru, senior counsel
for Mr.G.Devedoss.

:ORDER

(Common order of the Court was made by
The Hon'ble Chief Justice)

These two writ petitions, one by the State Government and another by the detenu namely Mr.Vaiko under the Prevention of Terrorism Act are premature for the reason that even before the exercise has been made under section 321 Cr.P.C., the writ petitions have been filed.

2. W.P. No.11662/2004 has been filed by Mr.Vaiko seeking a mandamus against the second respondent-State Government to implement the direction of the Review Committee made in Cr.No.280/02(TN) dated 8.4.200 4 forthwith by giving instructions to the third respondent to withdraw the prosecution in Special C.C.No.1 of 2003 on the file of the Special Court under the Prevention of Terrorism Act, Chennai at Poonamallee. The writ petition filed by the State Government in W.P. No.12300/2004 is seeking issuance of certiorari to quash the order dated 8.4.2 004 of the Review Committee constituted under the Prevention of Terrorism Act. The provisions added in sub-sections 4 to 7 of section 60 of Prevention of Terrorism (Amendment) Act, 2003 (Central Act 4 of 200 4) were already the subject matter of adjudication before this Court in W.P. Nos.1238 to 1240 of 2004. By judgment dated 4.2.2004 a Division Bench of this Court has upheld the constitutional validity of sub-sections 4, 5 and 6 and explained sub-section 7 reading down that even if the Review Committee comes to the conclusion that there is no prima facie case, the prosecution cannot be deemed to be withdrawn automatically. We had explained that if the Review Committee comes to the conclusion that there is no prima facie case, then the said administrative decision is binding on the State Government but not on the Public Prosecutor. It is for the Public Prosecutor to apply his mind independently and taking into consideration the interpretation given to section 321 Cr.P.C. by the Apex Court, take a decision and then act further basing upon the said decision. Even if the Public Prosecutor takes a decision to file a petition to withdraw the prosecution, the Court or the Special Court, as the case may b e, is not bound to automatically accept the said plea for withdrawal of prosecution. The Court has to assess the fact situation by applying the well settled legal principles revolving around section 321 of Cr.P.C.

3. Now the Review Committee has formed its opinion which is purely administrative in nature and the same though is binding on the State Government cannot bind the Public Prosecutor. In this regard, the legal principles enunciated by the Supreme Court in Balwant Singh v. State of Bihar (AIR 1977 SC 2265) are quite relevant. As such we hold that the plea which is made in W.P. No.12300/2004 is not justiciable as the matter is still at pre-section 321 Cr.P.C. stage and it is for the State Government to consider the matter in the light of the judgment of this Court rendered in W.P.

Nos.1238 to 1240 of 2004 dated 4.2.2004 and affirmed by the Supreme Court in S.L.P. (Crl.) Nos.868-870 /2004 dated 8.3.2004. Both the writ petitions are disposed of accordingly. No costs. Consequently, WPMP Nos.13714 and 14375 of 2004 are closed.

ns.

To

1.The Secretary to Union of India,
Ministry of Law and Justice,
401, 'A' Wing, Sastri Bhavan,
New Delhi.

2.The Secretary,
Review Committee on Prevention of
Terrorism Act, 2002,
Room No.246, Vigyan Bhavan Annexe, New Delhi.

3.The Secretary to State of Tamil Nadu,
Fort St. George, Chennai-9.

4.Special Public Prosecutor in
charge of POTA cases and
Additional Public Prosecutor,
Office of the State Public Prosecutor,
High Court Buildings, Chennai-104.

5.The Deputy Superintendent of Police,
"Q" Branch C.I.D. Kalaimagal Nagar,
Madurai-625 010.

□